

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Cousins Submarines, Inc.,)
Cousins Subs Systems, Inc.,)
)
Plaintiff,)
) Case No. 12 CV 387
v.)
)
Federal Insurance Company,)
)
Defendant.)

**FEDERAL INSURANCE COMPANY'S UNOPPOSED MOTION IN LIMINE NO. 4
TO PRECLUDE THE PARTIES FROM OFFERING IN THEIR CASE IN CHIEF ANY
DOCUMENTS NOT PRODUCED DURING DISCOVERY**

Defendant, Federal Insurance Company (“Federal”), moves this Court for an Order, *in limine*, precluding the parties from offering in their cases any documents not produced during discovery. The purpose of pretrial discovery is to formulate, define and narrow the issues to be tried and to give each party the opportunity to fully inform himself of the facts of the case and the evidence that may be presented at trial. *U.S. v. Procter & Gamble Co.*, 356 U.S. 677, 682, 78 S.Ct. 983, 986 (1958); *State ex rel Dudek v. Circuit Court*, 34 Wis.2d 559, 576, 150 N.W.2d 387, 397 (1967). Discovery is also designed to eliminate surprise. *Simplex, Inc. v. Diversified Energy Sys., Inc.*, 847 F.2d 1290, 1292 (7th Cir. 1988); *Meunier v. Ogurek*, 140 Wis.2d 782, 790, 412 N.W.2d 155, 158 (Ct. App. 1987). In order to deter the parties from attempting to avoid full discovery, the court has the power to exclude from evidence at trial any and all documents that were withheld during discovery and to prohibit any reference to such documents and evidence at a hearing or trial. Fed. R. Civ. P. 37(c)(1); *Musser v. Gentiva Health Svcs.*, 356 F.3d 751, 758

(7th Cir. 2004) (“The exclusion of non-disclosed evidence is automatic and mandatory under Rule 37(c)(1) unless non-disclosure was justified or harmless”); *Dubman v. N. Shore Bank*, 75 Wis.2d 597, 600, 249 N.W.2d 797, 799 (1977).

For the foregoing reasons, Federal Insurance Company respectfully requests that, in order to prevent unfair surprise and to promote the purposes of discovery and the adversary trial process, this Court enter an order barring reference to and introduction of any evidence relating to documents not produced during discovery and preventing any attempt to offer any documents into evidence that were not produced during discovery.

Dated: March 6, 2013

Respectfully submitted,

Federal Insurance Company

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